IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6542 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE PRADIP KUMAR SARKAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

KADARBHAI HASANBHAI BAJER

Versus

STATE OF GUJARAT

Appearance:

Ms. Malti Joshi with MR PH PATHAK for Petitioners

Ms. Binoda Gajjar AGP for M/S PATEL ADVOCATES for Respondents

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CORAM : MR.JUSTICE PRADIP KUMAR SARKAR

Date of decision: 04/07/2000

ORAL JUDGEMENT

#. Heard the learned counsel on behalf of the petitioners and the learned AGP on behalf of the respondents.

#. The present petitioners who are the daily wagers were granted the pay scale of Rs.950-1500 by an office order dated 31.12.1988 of the Executive Engineer, Roads & Buildings (State) Amreli-respondent no.2 in pursuance of a Government Circular dated 17.10.1988 .On the basis of the said Circular issued by the Government, the monthly wages of the petitioner were worked out on the basis of pay + DA and other benefits and after computing the amount, the petitioners are to be paid on the basis of daily wagers. While continuing the petitioners on daily wage basis, after computing their daily wages on the basis of the order of the respondent no.2 dated 31.12.1988, the respondent no.2 again passed an order dated 19.9.1989 directing that the petitioners' pay has been erroneously fixed at Rs. 950-1500 which are to be fixed in the pay scale of Rs. 750-940 as unskilled labourers are taking the pay of Rs. 750-950 + DA and other allowances and after computing the monthly pay on that basis, they are to be paid on daily wage basis. It is further ordered by respondent no.2 as per Annexure.C dated 19.9.1989 that the excess payment made to the petitioners on the basis of pay scale of Rs.. 950-1500 is to be realised in 11 equal monthly instalment of Rs. 150/-. It is alleged by the petitioners that before reducing their pay from Rs. 950-1500 and for realising excess payment in 11 equal monthly installments at the rate of Rs. 150/- p.m. no show cause notice was given to the petitioners and the order at Annexure - C has been passed without giving any opportunity to the petitioners to represent their case.

#. Ms. Malti Joshi learned counsel on behalf of the petitioners submitted that it is the settled position of law that the order which has a penal effect should not be issued without hearing the parties affected by such order. Learned counsel on behalf of the petitioners accordingly submitted that in the instant case, the initial pay of the petitioners has been reduced to Rs. 750-940 from Rs.950-1500 and for reducing the said pay, no show cause notice or any notice has been issued to the petitioners and therefore, the order is liable to be quashed. Learned counsel on behalf of the petitioners also submitted that the order for realisation of the excess payment is also liable to be quashed on the basis of the same ground. Ms. Binoda Gajjar learned AGP for the respondents submitted that the petitioners were working as unskilled labourers and discharging their duties as such. The fixation of their initial pay in the scale of Rs. 950-1500 was erroneous and therefore, the pay of the petitioners has been fixed at Rs. 750-940. The learned AGP on behalf of the respondents further

submitted that since wrong fixation of pay was done by the office, the Authority has a power to refix the pay on the basis of work done by the petitioners and therefore, no illegality has been committed by respondent no.2 in refixing the pay of the petitioners from Rs. 950-1500 to Rs. 750-940 and the order of realisation of excess payment in 11 equal monthly installment of Rs. 150/p.m. The learned counsel on behalf of the petitioners further disputed that the petitioners were actually discharging their duties as class IV staff. It is contended by the learned counsel on behalf of the petitioners that the petitioners were discharging their duties as Clerks in the office and they are skilled workers as per the provisions of the Industrial Disputes Act and therefore their pay in the scale of Rs. 950-1500 was correctly fixed earlier by respondent no.2.

#. It is an admitted fact that before issuing the order dated 19.9.1989 by the Executive Engineer at Annexure.C, no notice was given to the petitioners. It is the settled law that a person affected by any order should be given an opportunity to defend his case. It may so happen that issuing of show cause notice may be a mere formality. But in that case also, orders cannot be modified without giving opportunity to the person who is likely to be affected by such order. In view of this settled position of law I am of the view that the present petition should be allowed only on the ground that reduction of pay of the petitioners has not been done after giving notice to the petitioners. Accordingly present SCA is allowed and the order passed by the Executive Engineer, Roads and Buildings (State), Amreli dated 19.9.1989 is hereby quashed. It is however, made clear that if the Government considers that the fixation has been erroneously done, they are at liberty to fix the correct pay after giving notice to the parties concerned. If any amount is realised by the respondent no.2 from the petitioners, on the basis of the order at Annexure-C dated 19.9.1989 the same may be refunded to the petitioners. Rule is made absolute. No order as to costs.

(P.K.Sarkar.J)

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